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THE OTTAWA GROUP REPORT ON SMALL ARMS, LIGHT WEAPONS (SALW) AND NON-STATE ACTORS

Chantale Walker
Canadian Centre for Foreign Policy Development

November 7-8, 2000 (Bruxelles)

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125 promenade Sussex Drive, Ottawa, Ontario K1A 0G2
Telephone/Téléphone : **613 944 8278** Fax/Télécopieur : **613 944 0687**
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THE OTTAWA GROUP REPORT ON SMALL ARMS, LIGHT WEAPONS (SALW) AND NON-STATE ACTORS

November 7-8, 2000
Meeting in Bruxelles, Belgium

In Attendance: Wendy Cukier, Yvon Dandurand, Catriona Gourlay, Steve Lee, David Meddings, Sarah Meek, Geraldine O'Callaghan, Sharon Riggle, and Brian Wood.

Apologies: Chris Smith, Paddy Rawlinson

Note: *Although this document is presented as a true representation of the meeting held by The Ottawa Group, the views contained herewith do not necessarily reflect those of the entire group. In addition, the group members acted in an individual capacity and their views do not necessarily reflect the policies of the departments they represent.*

The Ottawa Group met to establish the issues to be addressed under the subject of small arms and light weapons (SALW) and non-state actors, thereby providing the way to new and innovative approaches to methods of control and elimination. While looking at the relationship between non-state actors and SALW, the group concentrated on the complexity of the issue of access to weapons by both state and non-state actors. This issue gave rise to various questions concerning the definition of non-state actors, the creation of international norms to deal with the transfer of weapons to international human rights violators, and the potential effects of the transfer of weapons being used as a foreign policy tool.

Upon first inspection, it was proposed that non-state actors be defined within 5 categories:

(1) Those who engage in military or para-military activities against the state;
(2) Those who aspire to an armed insurgency;
(3) Those who constitute an opposition group with a military strategy;
(4) Those who engage in providing security services (corporate); and
(5) Those who are ordinary civilians;

These categories were then used to formulate the discussion surrounding SALW and non-state actors, including issues of definition, supply, demand, transfer, and communication to engage with non-state actors.

It must be remembered that issues under the umbrella of SALW are largely political and humanitarian but, up to now, the international community has moved ahead only on the technical issues, such as the marking and identification of SALW. The political side of the control issue has always been outweighed by the perceived significant role supply plays in foreign policy and by the inability to understand fully the nature of the problem in terms of impact and effect. To

make change on the political side also demands that states recognize the importance of alternate power structures – a recognition that hardly exists today because of the way in which international relations are structured around the state.

The necessity to discuss non-state actors arises from the need to address how and why they are normally excluded from regular discussions on SALW, the impact state-to-state transfers – whether covert or overt – have on them and their role in the "success" of international commitments to certain causes. For example, some states have made it clear they will not sign the Landmines Convention until opposition groups, i.e. non-state actors, in their country and elsewhere agree to give up using anti-personnel landmines.[1] It is hard to deny that these oppositional groups, or non-state actors, play a role in international processes.

1. "The Problem"

- *What is the problem we are trying to address?*
- *Why do we want to restrict SALW access to non-state actors?*
- *What kind of trade and availability of SALW do we consider harmful and to whom?*

Governments of all kinds tend to assume that international agreements have to take place amongst and between states. This is because the state is and remains the fundamental actor in international relations. Beyond this, the level of analysis moves upwards, not down, to international finance and political organisations, such as the International Monetary Fund and the United Nations. In an era of rapid globalisation and change, new levels of analysis are becoming increasingly necessary because the state is becoming either bypassed or irrelevant. The example of SALW is especially intriguing in this respect. Over the past five years the SALW issue has become one of the most important items on the international agenda. Currently, NGOs, governments and independent analysts are grappling with ways to address what is rapidly becoming the most urgent security issue of the post-Cold War era, more global perhaps than even the landmine crisis.

It is now accepted that the majority of deaths and injuries sustained during conflict are the result of SALW. The rampant proliferation of illegal SALW and their use is both a cause and effect of transformed patterns of warfare. It is also the case that the majority of deaths and injuries are increasingly inflicted by individuals and groups that show no allegiance and often fierce opposition to the state in which they happen to reside. Seeking mechanisms to solve and control the SALW problem can only, at present, be agreed by states but any resulting agreements will certainly not be accepted or implemented by groups that exist in opposition to or outside of state structures. This conundrum will, of course, remain as it will also do in the case of landmines. However, it is important for the far-sighted members of the international community to begin a process that addresses these issues, if future progress in this area is to have any meaning.

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[1] This is especially true in South Asia, where several meetings funded by the Governments of Canada and Norway have identified the NSA issue as a major stumbling block to further progress towards the universalisation of the Landmine Convention.

One of the purposes of the Ottawa Group meeting was to raise questions that challenge the assumptions and views that governments have regarding non-state actors. Ninety per cent of most conflicts since World War II have been intra-state, a fact that seems to be consciously neglected by governments currently creating norms to regulate the movement of SALW. Governments must realise that conflicts continue to occur when one party is a non-state actor and such conflicts cannot be dismissed. Communication with non-state actors as well as with states must be part of normal processes in addressing the SALW issue.

Current advocacy and activity on and around the subject of SALW contains an implicit assumption that non-state actors, in any given situation, lack legitimacy and just cause. This is not always the case. There are many instances where the state lacks legitimacy, commits violence against innocent people and abuses human rights and civil liberties. There are cases when violent acts against the state can be considered acceptable. The Ottawa Group does not agree that state actors are always 'legitimate' actors and non-state actors are always the opposite.

2. Definition of Non-State Actors

- *What is the definition of non-state actors?*
- *What is excluded from this definition rather than what is included?*
- *How do governments define non-state actors?*
- *Does the term non-state actors only apply to political actors?*
- *Do we include brokers and traders as non-state actors?*
- *What about civilian possession of SALW?*
- *What about private security and private military corporations?*
- *What defines a legitimate versus an illegitimate armed opposition group?*

The Ottawa Group does not have answers to these questions.

However, neither do those who are responsible for moving this issue forward. Nor have governments answered these questions clearly. Some complexities around this issue need to be clarified.

Defining non-state actors as anything specified as a non-state entity is problematic because it creates a very large and diverse group with which to deal. It may be necessary to define non-state actors as separate groups when addressing specific issues, ie. that some contexts may create different terms for a non-state actor (one person's 'terrorist' is another's 'freedom fighter'). The legitimacy versus illegitimacy of an armed opposition group may also vary depending upon that for which they are fighting and the nature of the force they oppose. For instance, the inclusion of militias and warlords under the non-state actor category could vary according to the issue. Much of the definition also varies according to not only what the issue is but also which processes and mechanisms are being used to address any given issue.

3. What are the Factors Contributing to the Demand of SALW by Non-State Actors?

- *Is there a problem with governments restricting non-state actors' access to SALW?*
- *Why do non-state actors emerge?*
- *Are they a result of failed states / bad governance / corruption and mismanagement among officials?*
- *What creates the demand for non-state actors and the demand for SALW?*
- *How do we deal with the ethical issue of uniformity of application when decisions made by the international community may be subjective and biassed?*
- *If we are not providing people with SALW, what other means of protection are we offering them?*
- *How can we make people feel secure so they will be willing/able to give up their weapons?*
- *How can the issues of good governance, justice and policy framed in human rights be brought back into the discussion surrounding SALW since the lack of these issues leads to the emergence of non-state actors?*

Where a state is committing human rights violations and widespread, systemic abuses against its people, an opposition group being subjected to these crimes, or acting on behalf of and with the support of those that are, has a right to take up arms against their oppressor. However, the involvement of outside governments in arming such opposition groups is problematic when one cannot come to terms with exactly what is meant by a crime that could justify taking up arms for protection. It is argued that the threat needs to be very manifest and real for someone to be given a weapon for self-defence and thereby reject non-violence. Can this be determined by international humanitarian law?

There is a need to address the factors related to the emergence of non-state actors. Their very presence anywhere in the world is a sign that the performance of the state is wanting, although one can argue that there will always be a role for those who wish to criticise the state. The appearance of non-state actors on the political landscape can be more serious, however, a consequence of declining quality of life for which bad governance is responsible, the selective marginalization of minorities on ethnic lines, underdevelopment, the dual existence of exchange rates, excessive and unfair regulation, black marketering, and a decline in economic opportunity. It is a strategic mistake to brand non-state actors as a negative force rather than dialoguing with them and inviting them to become a part of the solution. However, it is also the case that some non-state actors have no interest in defining and implementing a solution. Warlords have a vested interest in the continuity of conflict and some NGOs will be critical of the state whatever its actions.

4. Where Are We Now?

- *What codes, conventions, agreements, etc. exist?*
- *What do they do?*
- *Where are the gaps?*

- *What kind of new proposals are currently being formulated?*
- *What mechanisms exist to address the exceptional circumstances in which it is deemed acceptable to arm non-state actors?*
- *When do you have the right to defend yourself?*
- *When do you have the right to oppose?*
- *What are the existing international rights conventions which would provide a basis for these rights?*

It needs to be made clear as to what the existing legislation is and what commitments governments have already made so that policy makers may make their decisions based on these responsibilities. It has been argued that where international norms are widely accepted, NATO should hold responsibility for maintaining these norms. This, however, becomes difficult to conceptualise when all international commitments are not taken into consideration.

It is a radical concept to think that the state has a monopoly over the means of violence, and if so, does this mean an individual has recourse against the state for not protecting him/her? Canada is struggling with this very problem.

Recommendation:

- Creation of a research study of a primarily legal nature to map the current conventions and regimes, and to understand who and what they control. This study would be to gather further information and to analyse, for example, the language of the European Union Code of Conduct among other international and customary laws. The study would also synthesize the international legal aspect concerning the arms trade and the transfer and control of SALW. Moreover, new protocols and plans need to be included in this analysis, such as the Arias Plan and its implications.

5. Towards a Consistent Approach – Implications

- *Do we need to apply the same fundamental standards to states as to non-state actors?*
- *How can the issues of good governance, justice and policy framed in human rights be brought back into the discussion surrounding SALW?*
- *Can we restrict transfer to non-state actors if at the same time we do not ensure proper controlling mechanisms?*
- *How do we ensure that states and non-state actors abide by the same international standards relating to the sale of arms?*

Given the complexity of the problem, any solutions must ensure dialogue with non-state actors, must ensure a human rights based justice and governance system, and must address how much of the harm is likely to be addressed by current initiatives and existing conventions. Towards these goals, there is a need for more critical analysis of the emergence of non-state actors including the role of the state and the processes surrounding state collapse.

There is a definitive need to ensure that the same standards of international humanitarian law are applied to states and non-state actors alike. There cannot be a norm on prohibiting arms to non-

state actors without prohibitions on the transfer of arms to states likely to infringe upon the human rights of its people. The international community must accept responsibility by shutting down the supply of SALW to all aggressive parties and not just non-state actors.

The issue of policing should also be addressed when speaking of SALW since policing is a part of governance. Civilians feel more secure with the existence of fair policing that may, in turn, make them more willing to give up their weapons, depending upon why they they have been acquired in the first place. The failure of civil policing often feeds into the rise of armed opposition. There is a need for states to spend more resources on setting up civil policing, and to acknowledge the need to separate policing as a social process from policing as force. This type of training could become part of international assistance in a conflict zone or a part of post-conflict reconstruction.

Recommendations:

- Set up a legal seminar in Ottawa to create an expert legal team to agree on a text and program of work to deal with the issue of non-state actors and SALW. This should be based on agreed international law.
- A code of conduct on SALW for state actors needs to be created, one that differs from the European Union Code of Conduct by actually recognizing and adhering to international law standards.
- Need to find out whether international responses exist for opposition groups that are not armed. Why does the act of arming make them legitimate enough for international action?

Additional questions

- What kind of trade is illicit?
- Why are we trying to control transfers to non-state actors?
- How can we control transfers to non-state actors?
- Where do we call on the international community to become involved?
- What role does the international community play? What role should it play?

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